

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

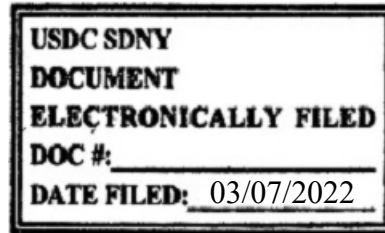
MORGAN ART FOUNDATION LIMITED,

Plaintiff,

-against-

MICHAEL MCKENZIE,

Defendant.



18-CV-4438 (AT) (BCM)

**ORDER SCHEDULING SETTLEMENT
CONFERENCE**

BARBARA MOSES, United States Magistrate Judge.

A settlement conference is scheduled before Magistrate Judge Barbara Moses on
April 27, 2022 at 2:15 p.m.

**THE PARTIES ARE DIRECTED TO READ THIS
ENTIRE ORDER CAREFULLY. FAILURE TO COMPLY
WITH PRE-CONFERENCE RESPONSIBILITIES MAY
RESULT IN SANCTIONS.**

1. Attendance of Parties, Trial Counsel, and Carriers Required. Each party must attend the settlement conference, together with that party's lead trial attorney, via videoconference (see ¶ 6 below). Counsel must be fully knowledgeable concerning the facts of the case, relevant law, and the progress of the case to date, including settlement discussions.

a. If a party is a corporation, union, or other non-natural person, it must attend the conference through a decision-maker with knowledge of the case and responsibility for determining the terms of any ultimate settlement; that is, a person who decides what settlement authority to give to counsel, not a person who has received, or must seek, authority from someone else within the organization.

b. If liability insurance is involved, each relevant carrier must also attend the conference through a decision-maker with knowledge of the case and responsibility for determining the amount of the ultimate settlement (or the carrier's portion thereof).

c. If a party fails to attend the settlement conference with all of the required persons, that party may be required to reimburse the other parties for their time and travel expenses or face other sanctions.

2. Pre-Conference Settlement Discussion Required. The purpose of a Court-facilitated settlement conference is to settle the case – not simply to begin a settlement dialog. The Court normally holds only one settlement conference per case. **The Court therefore requires that, after receipt of this Order, the parties conduct good-faith settlement discussions, in person or by telephone, and that the parties exchange and discuss concrete settlement proposals, in advance of the deadline, set forth below, for submitting confidential settlement letters. Past settlement negotiations may not be relied upon to satisfy this requirement.** Counsel should continue such discussions among themselves prior to the conference so as to clarify issues, narrow disputes, and otherwise make the conference as efficient and meaningful as possible.

3. Draft Settlement Agreement & Confidential Settlement Letter. No later than one week (seven calendar days) before the conference, the parties shall jointly submit a draft settlement agreement to chambers by email, addressed to Moses_NYSDChambers@nysd.uscourts.gov, marked "Confidential Material for Use Only at Settlement Conference." **Do not file the draft settlement agreement on ECF.** The draft need not be in final form, but should outline the conceptual terms on which the parties do or do not agree, and should clearly distinguish between the two. (The document may be submitted in redlined form for clarity of presentation.) **If the Court finds that the parties have not made sufficient progress towards a settlement in advance of the conference, the conference will be taken off calendar.** In addition to the draft settlement agreement, each party may submit a separate confidential settlement letter to chambers by email, also addressed to

Moses_NYSDChambers@nysd.uscourts.gov and marked "Confidential Material for Use Only at Settlement Conference." **Do not file the confidential settlement letters on ECF. Do not send copies to adverse parties unless all parties have agreed to exchange their letters.** Settlement letters are limited to six pages, not including any exhibits, which are permitted but should be kept to a minimum.

4. Acknowledgment Form. On the same date that the confidential settlement letters are due, each party shall submit the attached Acknowledgment Form to chambers by email, **and serve it on all other parties,** identifying the individuals who will attend the settlement conference. **Do not file the Acknowledgment Form on ECF.**

5. Conduct of the Conference. All proceedings at the settlement conference will be confidential. Discussions are "off the record," and may not be used in discovery or at trial. The Court will function as a mediator. Efficient use of this process requires that parties and counsel be prepared for the conference and candid with the Court. At the outset of the conference each party may make a brief presentation in the presence of all parties and counsel. Since the purpose of the conference is to facilitate settlement – not to try the case – presenters are requested to address their remarks directly to the opposing party and to focus on the issues most relevant to settlement. Following the initial joint session, the Court will work separately with each side in private. During these sessions the Court may address questions directly to the parties (in the presence of their counsel) and will expect candid responses. In addition, all parties should be prepared to disclose their legal fees and costs to date and their estimates of fees and costs through judgment. Additional joint sessions may be convened if likely to advance the goal of settlement.

6. **Attendance.** Unless public health conditions dictate otherwise, the settlement conference will take place in Courtroom 20A of the Daniel Patrick Moynihan United States Courthouse. If public health conditions worsen, the Court will notify the parties that the conference must take place remotely, using the Court's videoconferencing technology (Zoom) or – with advance Court approval – such alternative videoconferencing technology as the parties may agree upon and arrange. If the Court's technology is used, the Court will provide the link and further instructions in an email to counsel closer to the date of the conference.

7. **Requests to Reschedule the Conference or Modify these Procedures.** Requests to reschedule the settlement conference, or to modify the page limits, attendance requirements, or other provisions of this Order, must be made by letter-motion, filed via ECF in accordance with the Individual Practices of Judge Moses, as soon as the need for the adjournment or modification arises and in any event at least one week (seven calendar days) before the scheduled conference. Requests for adjournment must include two proposed dates, acceptable to all parties and counsel, for the rescheduled conference. Before proposing dates, counsel are advised to call chambers to determine the Court's availability. Requests to modify the attendance requirements will be granted only on a showing of significant hardship. If the parties settle the case prior to the scheduled conference, they must promptly so inform the Court by letter, filed via ECF, stating whether the settlement requires Court approval and, if not, how much time the parties require to submit a stipulation of dismissal to the district judge.

8. No Effect on Other Deadlines. Neither the scheduling of a settlement conference nor any adjournment affects the parties' other litigation deadlines or obligations.

Dated: New York, New York
March 7, 2022

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge

ACKNOWLEDGMENT FORM-SETTLEMENT CONFERENCE

Counsel of record for each party must complete and sign this form and email it to the Court at Moses_NYSDChambers@nysd.uscourts.gov, with copies sent simultaneously to all other parties, no later than one week (seven calendar days) before the parties' scheduled settlement conference.

Name of Case: _____

Docket No.: _____ **Date of Sett. Conference:** _____

Name of Party Submitting this Form: _____ ☐ **Pltf.** ☐ **Def.**

1. Acknowledgment by Counsel. I am lead trial counsel for the party listed above. I will attend the settlement conference in this action via videoconference, as will my client (if the client is a natural person), or by a client representative (if the client is a non-natural person) who is a decision-maker with knowledge of the case and responsibility for determining the amount of any ultimate settlement. I will arrange for a translator if my client requires that service. I further acknowledge that if insurance carrier approval, consent, or funding is required for my client to settle this action, a representative of each relevant carrier, who is a decision-maker with knowledge of the case and responsibility for determining the amount of any ultimate settlement (or the carrier's portion thereof) must also attend the conference.

2. Client Attendance.* Check one box:

- ☐ My client is a natural person and will attend the settlement conference via videoconference.
- ☐ My client is a corporation, union, agency or other non-natural person. The following individual will attend the settlement conference via videoconference as a representative of my client:

Name: _____

Title: _____

3. Carrier Attendance.* Check one box:

- ☐ No insurance carrier approval is required for my client to settle this case.
- ☐ The following individual will attend the settlement conference via videoconference as a representative of the following insurance carrier:

Name: _____

Title/Name of Carrier: _____

Date

Signature of Lead Trial Counsel

Print Name of Lead Trial Counsel

* If you represent more than one party or require approval from more than one carrier you must submit attendance information for all clients and carriers.